

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Stephen D. Cunnison, Chair
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DATE: August 18, 2003

SUBJECT: Probate Rules on Accounts and Petitions for Distribution in Decedents'
Estates (adopt rules 7.551, 7.651, and 7.652) (Action Required)

Issue Statement

Proposed rule 7.551

Executors or administrators of large estates that have nonresident beneficiaries are required by a Revenue and Taxation Code section and regulations of the California Franchise Tax Board to obtain and file a tax clearance certificate from the board before their final accounts may be approved by the court. A rule of court prescribing the duties of executors or administrators in these circumstances would foster compliance with these requirements and would apply the requirements specifically to affected estates where the final account has been waived.

Proposed rules 7.651 and 7.652

Rules 7.651 and 7.652 would prescribe the manner of describing property to be distributed in petitions for distribution. Rules of court on the contents of such petitions are needed to ensure that the court receives enough information about the property to frame an appropriate order authorizing the distribution.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council adopt, effective January 1, 2004, proposed new rules 7.551, 7.651, and 7.652 of the California Rules of Court to prescribe duties of all personal representatives of decedents' estates concerning petitions for distribution, and certain specific

responsibilities of personal representatives of large estates with nonresident beneficiaries concerning California income taxes.

The proposed rules are attached at pages 6–7.

Rationale for Recommendation

Rule 7.551

Proposed rule 7.551(a) would prohibit court approval of a final account in a decedent's estate with an appraised value greater than \$1,000,000 and with nonresident beneficiaries who have received or will receive an aggregate distribution in excess of \$250,000, until the personal representative files the tax clearance certificate of the Franchise Tax Board showing that all state income taxes, penalties, and interest payable by the decedent or the estate have been paid or that payment has been secured. Under subdivision (c) of the rule, if the certificate has an expiration date the account or report could not be approved after that date unless a new or revised certificate is filed.

The tax clearance certificate is required by Revenue and Taxation Code section 19513 and by the Franchise Tax Board's regulations, particularly California Code of Regulations, title 18, section 19513. That regulation establishes the minimum values of the estate and the nonresident beneficiaries' aggregate distribution. Subdivision (a) of the proposed rule is intended to make the minimum value requirements more accessible to practitioners and personal representatives than they are in the regulation.

More importantly, proposed rule 7.551(b) would fill a gap in the coverage of the statute in a way consistent with its apparent purpose. Revenue and Taxation Code section 19513 forbids court approval of a final *account* in an affected estate if the certificate has not been filed, but is silent on court approval of the final report that must be filed and approved by the court when the final account has been waived.¹

There is no evidence that the Legislature intended to permit personal representatives to avoid their responsibility to obtain and file the tax clearance certificate by arranging to have the estate beneficiaries waive the final account. Proposed rule 7.551(b) would expressly apply the certificate requirement to a final report, thus reaching an affected estate when the final account has been waived.

Rules 7.651 and 7.652

Proposed rule 7.651 would require that a petition for distribution in a decedent's estate contain a detailed description of all property to be distributed, including specific information about certain kinds of such property—cash, real property, secured and unsecured promissory notes, and securities held in brokerage accounts. These provisions

¹ See Prob. Code, § 10954(a) and (c), and California Rules of Court, rule 7.550.

are designed to ensure that the court receives enough information to fully and accurately describe the property to be distributed in its order authorizing the distribution.

Proposed rule 7.652 would govern the allegations that must be made in a petition for distribution concerning the character of property to be distributed—community, quasi-community, or separate—where that character affects the distribution. If the property to be distributed is community or quasi-community, the rule would also require the petition for distribution to state whether the entire interest of the decedent and his or her spouse, or only the decedent’s interest, is to be distributed. This information is necessary for the court to frame an appropriate distribution order.

This information will also help the court determine whether an election of the surviving spouse is required to support inclusion of the property in the decedent’s estate and its distribution from the estate under the provisions of Probate Code section 13502.²

Proposed rule 7.652(b) would require the petition for distribution to allege the filing date of any election under section 13502, an allegation that is critical to the success of the petition for distribution because of the time limits for the election imposed by the statute.³

Rules 7.651 and 7.652 are based on local rules in Los Angeles and San Francisco.⁴

Alternative Actions Considered

The advisory committee developed and proposed these rules as part of its ongoing assignment to develop statewide rules of court in probate proceedings. No alternative actions were considered.

Comments From Interested Parties

These proposed new rules were circulated to an expanded list of probate practitioners and probate law sections of local bar associations in addition to the AOC’s standard mailing list of court executives, judges, and other interested persons and organizations, including the Trusts and Estates Section of the California State Bar.

² Section 13502 requires the written election of the surviving spouse to administer any property in the decedent’s estate that otherwise would be held by or pass to the surviving spouse outside the estate proceeding. This includes not only the surviving spouse’s share of community or quasi-community property but also the decedent’s interest in such property and the decedent’s separate property that is to go to the surviving spouse under a will or by intestate succession, because that property would otherwise pass to the spouse without administration in the decedent’s estate under Prob. Code, § 13500.

³ Section 13502 requires the spouse’s election to be made in writing and filed in the deceased spouse’s estate within four months of the date Letters Testamentary or Letters of Administration were issued to the deceased spouse’s personal representative, unless the time is extended by the court for good cause shown.

⁴ See Superior Court, County of Los Angeles Local Rules, rules 10.126 (proposed rule 7.651) and 10.114 (proposed rule 7.652); and Superior Court, County of San Francisco Local Rules, rules 14.95E (proposed rule 7.651) and 14.86 (proposed rule 7.652).

Seven comments were received concerning these proposed rules.⁵ Five were unqualified approvals without specific comments. Two commentators, Sandra Riley and Harlean Carroll, probate attorneys employed by the Superior Court, County of Los Angeles, approved the rules if modified. No disapproving comments were received.

Ms. Carroll and Ms. Riley recommended modifying proposed rule 7.651(b), concerning property descriptions in petitions for distribution, by adding paragraphs prescribing how additional kinds of property should be described. One suggestion was to require descriptions of the individual securities held in brokerage accounts. Apparently some personal representatives attempt to distribute interests in brokerage accounts rather than the securities held in those accounts.

The advisory committee agrees with this recommendation. It added a new paragraph (4) to rule 7.651(b) requiring complete descriptions of each individual security held in “street name” in security brokers’ accounts.

The advisory committee does not agree with other comments made by Ms. Riley or Ms. Carroll concerning rule 7.651(b). The suggestion that the rule should contain a “catchall” requirement of specificity in descriptions of property is addressed by rule 7.651(a), which says that a petition for distribution must list *and describe in detail* the property to be distributed.

Similarly, the advisory committee does not agree with Ms. Riley that the petition for distribution should identify the financial institutions where cash to be distributed is held. The accounting will provide enough detail about the whereabouts of the estate’s cash. The distribution will be of fungible cash, not interests in the accounts at the financial institutions. If the cash to be distributed is in one or more savings accounts without checking privileges, then requiring identification of these accounts a month before the distribution would be meaningless. The typical petition for distribution must be filed at least that far in advance of the actual distribution. The cash would be moved to a checking account to make the distribution possible, so the information provided in the petition would no longer be accurate by that time.

Both Ms. Carroll and Ms. Riley urged the addition of a new subdivision (c) to rule 7.652. That rule governs allegations in petitions for distribution where the character of property to be distributed—community, separate, or quasi-community—will affect the distribution. The recommended provision would refer to Probate Code section 13503 and would impose requirements concerning that section similar to those requirements in subdivision (b) of the rule concerning section 13502.

⁵ A chart showing the public’s comments received and the advisory committee’s responses is attached at pages 8–10.

The committee disagrees with this recommendation. Section 13502 concerns property that the surviving spouse has elected to be administered in and distributed *from the deceased spouse's estate*. Thus, that section is properly addressed in a court rule concerning estate distributions.

Section 13503, however, does not concern estate property. It concerns a surviving spouse's interest in marital property that he or she elects to transfer to a trustee identified in the deceased spouse's will, to be administered by the trustee. That property will go to the trustee directly from the surviving spouse. It will not come into the deceased spouse's estate and it will not be distributed to the trustee from that estate. Section 13503's only connection with the deceased spouse's estate are its requirements that (1) the trust receiving the surviving spouse's property be identified in the deceased spouse's will and (2) the surviving spouse's election to transfer and agreement with the trustee be filed in the estate proceeding.

Implementation Requirements and Costs

These proposed rules are unlikely to result in additional costs beyond the ordinary expenses associated with the adoption of any new rule of court. These rules should not increase the difficulty or expense of preparing accounts or petitions for distribution in decedents' estates. To the extent that the rules would provide additional guidance to practitioners, they could result in lower overall costs because fewer accountings or petitions for distribution would have to be continued due to failure to provide needed information.

Rules 7.551, 7.651, and 7.652 of the California Rules of Court are adopted, effective January 1, 2004, to read:

Rule 7.551. Final accounts or reports in estates with nonresident beneficiaries

- (a) **[Final account]** Under Revenue and Taxation Code section 19513 and the regulations of the Franchise Tax Board, the court must not approve a final account in an estate that has a total appraised value greater than \$1,000,000 and from which more than \$250,000 in the aggregate has been distributed or is distributable to beneficiaries who are not residents of California, until the executor or administrator has filed the Franchise Tax Board's state income tax certificate showing that all state personal income taxes, additions to tax, penalties, and interest imposed on the estate or the decedent have been paid or that payment has been secured.
- (b) **[Final report]** If a final account is waived under Probate Code section 10954 in an estate described in (a), the court must not approve the final report required by section 10954(c)(1) until the executor or administrator has filed the Franchise Tax Board's state income tax certificate showing that all state personal income taxes, additions to tax, penalties, and interest imposed on the estate or the decedent have been paid or that payment has been secured.
- (c) **[Expiration date of certificate]** If the certificate described in (a) or (b) is issued on the condition that the final account or report must be approved before a date specified in the certificate, the court must not approve the final account or report after that date unless the executor or administrator first files a new or revised certificate.

Rule 7.651. Description of property in petition for distribution

- (a) **[Property description]** A petition for distribution must list and describe in detail the property to be distributed, in the body of the petition or in an attachment that is incorporated in the petition by reference. If an account is filed with the petition, the description must be included in a schedule in the account.
- (b) **[Specific description requirements]** The description under (a) must:
- (1) Include the amount of cash on hand;
 - (2) Indicate whether promissory notes are secured or unsecured, and describe in detail the security interest of any secured notes;

1 (3) Include the complete legal description, street address (if any), and
2 assessor's parcel number (if any) of real property; and

3
4 (4) Include the complete description of each individual security held in
5 "street name" in security brokers' accounts.

6
7 **Rule 7.652. Allegations in petition for distribution concerning character of property**
8

9 **(a) [Required allegations]** If the character of property to be distributed may
10 affect the distribution, a petition for distribution must allege:

11
12 (1) The character of the property to be distributed, whether separate,
13 community, or quasi-community; and

14
15 (2) That the community or quasi-community property to be distributed is
16 either the decedent's one-half interest only, or the entire interest of the
17 decedent and the decedent's spouse.

18
19 **(b) [Compliance with Probate Code section 13502]** If any property is to be
20 distributed outright to the surviving spouse, a written election by the surviving
21 spouse that complies with Probate Code section 13502 must have been filed,
22 and the petition must show the filing date of the election.

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Rules on Accounts or Reports in Decedent's Estates with Non-Resident Beneficiaries
and on Petitions for Distribution in all Decedent's Estates

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee Response
1.	Ms. Harlean Carroll Probate Attorney, Superior Court of California, County of Los Angeles.	AM	N	<p>Rule 7.551—appears ok.</p> <p>Rule 7.651—appears ok, except historically, if an account is waived, there is no real property interest involved, and the distribution is a final distribution, a general allegation, such as residue of cash, has been accepted. Also, subpart (b) should probably be expanded to include the description of securities, partnership interests, etc.</p> <p>Rule 7.652—appears ok, except it should probably include a subpart (c) to state “If the community or quasi community property to be distributed to a trustee, either under the will or of an existing trust, is the entire interest of the decedent and the decedent’s spouse, the petition must also allege, and the court file must show, compliance with the provisions of the Probate Code section 13503, concerning the election of a surviving spouse, or the representative of the surviving spouse to the trustee.</p>	<p>The advisory committee partially agrees with this comment. The committee has added an additional specific property description item to subdivision (b) of the rule. See response to the comment of Ms. Sandra Riley below.</p> <p>The advisory committee disagrees with this comment. This rule concerns distributions from decedents’ estates. Probate Code section 13503 refers only to the <i>surviving spouse’s</i> share of marital property that he or she is transferring to the trustee, not to any property coming from the decedent’s estate and not to both halves of the marital property. The only part of section 13503 that affects the decedent’s estate is the statutory requirement that the surviving spouse’s election and agreement with the trustee must be filed in the estate proceeding.</p>
2.	Mr. Robert Gerard President, Orange County Bar Association	A	Y	No specific comments were made.	No response is necessary.

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	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee Response
3.	Ms. Sandra Mason Director of Civil Operations, Superior Court of California, County of San Luis Obispo	A	N	No specific comments were made.	No response is necessary.
4.	Ms. Margaret Anne Payne Member, Trusts and Estates Administration Committee, Trusts and Estates Section, State Bar of California	A	Y	No specific comments were made.	No response is necessary.
5.	Ms. Anne Pierce Legal Research Attorney, Superior Court of California, County of Ventura	A	N	No specific comments were made.	No response is necessary.
6.	Ms. Sandra Riley Supervising Probate Attorney, Superior Court of California, County of Los Angeles	AM	N	<p>Rule 7.551—I question whether the heading of the section is sufficient. Should the heading also refer to requirement of filing Franchise Tax Board Income Tax Certificates for Non-Resident Beneficiaries at the time of final distribution?</p> <p>Rule 7.651, subsection (b)—this subsection does not cover all categories of assets. Suggestion is to include information regarding securities, including listing of individual holdings of securities in brokerage accounts, names of financial institutions where cash is held, and perhaps a catch-all subsection requiring specificity when describing other assets.</p>	<p>The advisory committee disagrees with this comment. Headings are highlights only, aids to research. They are not intended as summaries of entire rule provisions. They should ordinarily be no longer than one line.</p> <p>The advisory committee partially agrees with this comment. The committee has added a new paragraph (4) to subdivision (b) requiring identification of the individual securities held in a brokerage account. However, there is no reason to require identification of a financial institution where cash to be distributed is held.</p>

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Rules on Accounts or Reports in Decedent's Estates with Non-Resident Beneficiaries
and on Petitions for Distribution in all Decedent's Estates

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee Response
				Rule 7.652—In light of subsection (b), should there be a subsection (c) referring to Probate Code section 13503 election when a surviving spouse's interest in community or quasi-community property is to be transferred to a trustee of an existing trust?	Interests in the bank account are not being distributed. Subdivision (a) of the rule is a sufficient "catch-all." The advisory committee disagrees with this comment. See the committee's response to comment of Ms. Harlean Carroll above.
7.	Ms. Emily Stuhlbarg President, Emily Stuhlbarg and Associates, Inc., County of Los Angeles, private professional conservator.	A	N	No specific comments were made.	No response is necessary.